



DATE: JULY 5, 1995

CASE NO: 95-LCA-6

In the Matter of

ADMINISTRATOR, WAGE AND HOUR
DIVISION, EMPLOYMENT STANDARDS
ADMINISTRATION
Prosecuting Party

v

MICRONESIAN SALES COMPANY, INC.
Respondent

Before: DONALD B. JARVIS
Administrative Law Judge

DECISION AND ORDER ENTERING CONSENT JUDGMENT

This is an action by the Department of Labor, Employment Standards Administration, Wage and Hour Division (Wage and Hour) against Micronesian Sales Co., Inc. ("MSC") brought under the Immigration and Nationality Act, 8 U.S.C. §§1101, *et seq.*, as amended by the Immigration Act of 1990 (P.L. 101-649) and the Miscellaneous Technical Immigration and Naturalization Amendments of 1991 as augmented by 8 U.S.C. §1182(n)(2) and 29 CFR §§507.820-840.

This case was set for hearing on May 18, 19, 1995 at Agana, Guam. On May 1, 1995, the Solicitor filed a Notice of Settlement and an order removing the case from the calendar was entered on May 4, 1995. On June 2, 1995, the parties filed a proposed Consent Judgment with supporting papers.

The Consent Judgment is hereby incorporated by reference and made a part of this Decision and Order. The Consent Judgment provides that it does not constitute an admission by MSC of any of the findings contained in the Determination Letter or of any other wrongdoing or unlawful act by MSC and neither it nor the Determination Letter shall constitute a finding of the Secretary of Labor of the occurrence of a violation within the meaning of 8 U.S.C. §1182 or 29 CFR §507.855.

The Consent Judgment also provides that neither it nor the Determination Letter shall constitute a finding of a substantial failure to meet a condition of paragraphs (1)(C) or (1)(D) or a willful failure to meet a condition of paragraph (1)(A) of 8 U.S.C. §1182(n).

Additionally, the Consent Judgment states that all violations cited in the Determination Letter issued by Wage and Hour to MSC shall be deemed fully resolved by it.

Generally, the Consent Judgment provides that:

MSC will voluntarily withhold the filing of any new H-1B labor condition applications ("LCA") and any new H-1B nonimmigrant visa petitions on behalf of itself or its subsidiaries until such time as all monies owed pursuant to the terms of the Consent Judgment are paid in full. In the event of default, MSC agrees that it will not file, and that the Employment and Training Administration will not approve, any new LCA's until the provisions of the Consent Judgment concerning default have been complied with, and the default cured. The Consent Judgment does not affect MSC's right to pursue any other temporary or permanent visa sponsorship options, or to renew existing LCA's granted prior to its effective date. MSC agrees to comply in all respects with the Act and applicable regulations in connection with any future H-1B application or petition. MSC agrees to provide copies of its LCAs, the prevailing wage, and the actual wage to all new H-1B employees, their immediate supervisors, and the payroll authority charged with entering their wage rate for payroll purposes. MSC will obtain written verification of compliance with the applicable wage rate for each H-1B LCA by no later than the end of the first pay period following the onset of each H-1B's employee's employment with MSC or its subsidiaries. This verification will be placed in the public access file relating to the LCA in question. Each future and current H-1B nonimmigrant employed by MSC will be paid the higher of: (1) the prevailing wage for the occupation in the area where he/she actually performs his/her job duties; or (2) the actual wage paid by MSC to all other individuals at that location with similar experience and qualifications for the employment in question. For purposes of meeting this requirement, MSC will determine the actual wage paid to other individuals in accordance with the applicable regulations, 29 CFR §507.703(e)(1)(i), i.e. by comparing the salary of the H-1B worker to that of all domestic workers performing the same occupation at the same location. MSC will document in its public access file and in the file of each H-1B nonimmigrant worker the system which it has used to establish his/her salary.

The Consent Judgment also provides that MSC will pay to Wage and Hour \$82,700.00 in back wages to 15 employees, for the period from May 1, 1992, through July 31, 1994, as set forth in an attached Exhibit showing the name of each of the employees and listing the gross back wage amount for the employee and the period of employment by MSC which is covered therein for the employees. MSC will pay \$10,500.00 in settlement of the civil money penalties proposed in the determination letter. MSC agrees to pay the total amount due in installment payments of \$3,500.00 per month for 26 months and one final payment of \$2,200.00 for a total payment of \$93,200.00. The installments will be paid on or before the fifth day of the month, with the first installment due on or before June 5, 1995.

The Consent Judgment provides for the allocation of the installment payments and has provisions which would apply in the event of a default.

The Consent Judgment provides for its immediate entry and each party waives its right to contest the findings and order entered. The record shows that MSC submitted the first installment check for \$3,500.00 along with the Consent Judgment.

I have examined the Consent Judgment in the light of the record and find and conclude that it should be approved.

ORDER

It is Ordered That:

1. The Consent Judgment submitted by the parties which is attached hereto is adopted and approved and made the Decision and Order of the Court.
2. The parties shall comply with each and every term of the Consent Judgment.
3. MSC's request for a hearing in this matter is dismissed.
4. Further proceedings in this case are discontinued.

DONALD B. JARVIS
Administrative Law Judge

San Francisco, CA